86-903

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CESARIO ZARTUCHE,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

LAWRENCE G. DIRKSEN
2635 Flossmoor Road
Flossmoor, Illinois 60422
(312) 957-7707

Counsel for Petitioner

Photex — 444 North Wabash Avenue — Chicago 60611 — 321-0223

50PP

QUESTION PRESENTED FOR REVIEW

Whether the Illinois Apppellate Court erred when it upheld, in the face of a fourth amendment challenge, a warrant issued to search Petitioner and certain premises where the totality of the circumstances presented to the issuing Magistrate did not show that the source of the information was reliable and that subsequent police investigation did not give reason to believe that Petitioner was either selling drugs or that he even lived on the premises.

LIST OF PARTIES TO PROCEEDINGS IN THE APPELLATE COURT

The People of the State of Illinois v. Cesario Zartuche

Richard M. Daley
State's Attorney of Cook County
500 Richard J. Daley Center
Chicago, IL 60602
(312) 443-5497

Appeared for the People of the State of Illinois.

Cesario Zartuche
1315 Park Avenue
Chicago Heights, IL 60411

Lawrence R. Dirksen
Joseph C. Corsino
2635 Flossmoor Road
Flossmoor, IL 60422
(312) 967-7707

Appeared for Defendant-Appellant Cesario Zartuche

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

CESARIO ZARTUCHE,

Petitioner,

v.

PEOPLE OF STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

Petitioner CESARIO ZARTUCHE was convicted of possession of more than fifteen grams of heroin with intent to deliver and more than ten grams but less than thirty grams of cocaine with intent to deliver. He was sentenced to seven years in prison. He appealed the denial of his Motion to Quash the Warrant and Suppress Evidence. His conviction was

affirmed by the Appellate Court of Illinois. The Illinois Supreme Court refused to grant Petitioner's Leave to Appeal. Petitioner prays that a Writ of Certiorari issue the Judgment of the Illinois Appellate Court.

REFERENCE TO REPORTS OF OPINIONS

The Opinion of the Appellate Court of Illinois is not reported. However, for ready reference, it is attached as Appendix A.

The Order of the Supreme Court of Illinois denying leave to appeal is also not reported. It is attached as Appendix B.

STATEMENT OF JURISDICTIONAL GROUNDS

(i) The Judgment of the Appellate Court of Illinois was entered on March 17, 1986. Rehearing was denied on June 9, 1986.

(ii) A timely Petition for Leave to Appeal to the Supreme Court of Illinois was denied on October 2, 1986.

(iii) Does not apply.

(iv) Jurisdiction of this Court is invoked under Title 28, Sec. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED
UNITED STATES CONSTITUTION, AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effect, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Officer George Sintic, of the Chicago Heights Police Department, and John Doe, an unknown informant, appeared before an Illinois trial judge on October 16, 1982, and signed a search warrant complaint to search the premises located at 1315 Park Avenue, Chicago Heights, IL, and the person of Petitioner Cesario Zartuche. (C. 133-8) The object of the search was heroin, items used in the sale,

manufacturer and distribution of heroin, proof of residence and recorded United States currency of the Chicago Heights Police Department. (C. 133)

The search warrant was executed with the resulting inventory of approximately 41.3 grams of heroin, approximately 11.2 grams of cocaine, United States currency, various forms of proof of residency and other items alleged to be contraband. (R. 106-112)

Petitioner Cesario Zartuche was arrested and subsequently indicted for possession of more than fifteen grams of heroin with intent to deliver and possession of more than ten grams but less than thirty grams of cocaine with intent to deliver in violation of the Illinois Revised Statutes, Ch. 56 1/2, Sections 1401(a)(1)-1408 and 1401(b)-1408, respectively. (C. 146-7a)

Defense Counsel filed a Motion to

Suppress the Search Warrant, claiming that the Complaint for warrant did not establish probable cause. (C. 144-5)

COMPLAINT FOR SEARCH WARRANT

Detective Sintic had stated in the Complaint for search warrant that on October 4, 1982, Doe, an informant, told him that he had purchased heroin from a third person, Richard Claus. (C. 133-4)

According to the police officer, Doe related an incident where Claus told him that he could buy dope from "Chalo (Cesario Zartuche)" at Chalo's house; whereupon Doe and Claus drove to a location in Chicago Heights, Claus walked out of sight and returned with a powder which Claus claimed he ingested and recognized to be heroin. (C. 134)

The officer further stated in the Complaint that on two other occasions, October 6 and 15, 1982, he observed Doe meet Claus and drive to a location in

Chicago Heights, (C. 134-5, 137) Sintic followed Claus from this location on each occasion, to a building at 1315 Park Avenue. (C. 135, 137) Claus subsequently returned to Doe's vehicle and then left. (C. 135, 137) On each occasion Doe gave Sintic a packet of powder which a field test indicated was heroin. (C. 136, 137) Doe told Sintic on each occasion that Claus had said that "Chalo (Zartuche)" had a good supply of heroin, if more was needed. (C. 135, 137)

The officer further stated that he had given Doe recorded money to make the purchase on each occasion and that he (Sintic) had Doe's person and vehicle searched before and after the purchase. (C. 134-7)

The officer also asserted in the Complaint that he had known Doe for three months, that Doe had used heroin for six months and was familiar with its effects.

(C. 133)

The officer further stated in the Complaint that he received a report on October 15, 1982, to the effect that an agent of the local drug enforcement team had, on the previous July 27, purchased heroin from Claus. (C. 138) On that occasion, according to the report, another agent had followed Claus to 1315 Park Avenue while the first agent waited for Claus to return to his car with the heroin. (C. 138)

The officer further stated in the Complaint that four and one-half years earlier, Cesario Zartuche had been arrested and charged with possession of heroin and cannabis as a result of a search warrant executed at 1315 Park Avenue, Chicago Heights, IL. (C. 138)

HEARING ON MOTION TO SUPPRESS SEARCH WARRANT

At the hearing on Motion to Suppress

Search Warrant, Defense Counsel argued, among other things, that the credibility or reliability of either Doe or Claus had not been established and that none of the conclusions in the Complaint were shown to have a sufficient factual basis. (R. 2-11) Counsel further argued that the Complaint contained false information, since Officer Sintic knew or should have known that the February 1978 search alluded to in the Complaint did not result in the seizure of any unlawful substance. (R. 30)

An Illinois trial judge denied the Motion to Suppress the Warrant. (R. 38) Thereafter, Cesario Zartuche was found guilty of possession of heroin and cocaine. He was sentenced to a term of seven years in the Illinois Department of Corrections. He filed a timely appeal to the Illinois Appellate Court, which was unsuccessful. His Petition for Leave to

Appeal to the Illinois Supreme Court was denied and Petitioner now seeks relief from this Court on a Writ of Certiorari.

Thus the Illinois Court has decided this case in a way that conflicts with this Court's decision in Illinois v. Gates, 462 U.S. 213 (1983). Therefore, this Court should grant Certiorari.

In an unpublished opinion filed March 17, 1986 the Illinois Appellate Court rejected Petitioner's arguments. The Illinois Court held that under the totality of the circumstances, there was probable cause to issue the warrant. The Court held that the information supplied by Claus, the third party, was substantially corroborated by independent police investigation. (unpublished opinion p.6) After Mr. Zartuche filed a Petition for Rehearing, the Appellate Court issued a second unpublished opinion, which reaffirmed the conviction. Petition

for Leave to Appeal to the Illinois Supreme Court was denied on October 2, 1986.

REASONS FOR ISSUANCE OF WRIT

The Writ of Certiorari should be granted in this case because the Illinois Court has misconstured this Court's decision in Illinois v. Gates, 462 U.S. 213 (1983). The Illinois Court has erred by upholding, in the face of a fourth amendment challenge, a warrant issued to search Petitioner and certain premises where there was no showing that the source of the information was reliable and no police investigation provided reason to believe Petitioner sold drugs or even lived at that address.

Illinois upheld the Warrant had been issued upon a Complaint which established neither the reliability of the informant, Claus, or the basis for the conclusions that Petitioner sold Claus drugs at the

Park Avenue location. Thus, under the totality of the circumstances test enunciated by this Court in Illinois v. Gates, 462 U.S. 212 (1983) the decision of the Illinois Court must be reversed.

In Gates, this Court recognized "that an informant's "veracity", "reliability" and "basis of knowledge" are all highly relevant in determining the value of his report." 462 U.S. at 230. The Court held, however, that these were not seperate and independent requirements, but "closely intertwined issues". 462 U.S. at 230. The Court stated: "...a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability..." 462 U.S. at 233. The Court concluded however, that "[the magistrate's] actions cannot be a mere ratification of the bare conclusions of others." 76 L. Ed. 2d at 549.

This Court went on to offer a "classic case" of probable cause demonstrated by the corroborative efforts of the police to support an informant's tip. Draper v. U.S., 358 U.S. 307, (1959) cited at Gates, 76 L. Ed. 2d 551. In Draper, the informant told the police that the suspect, Draper, would be transporting heroin on a certain day. The informant offered a detailed description of the suspect, his clothing, and his manner of walking fast. He also told the police that the suspect would arrive in Denver by train from Chicago on one of two days carrying the heroin. The informant did not give any indication of the basis for his information. The Court held, however, that since the police personally verified every facet of the information except whether Draper had in fact accomplished his mission to obtain heroin, probable cause existed that in fact he had. 462

U.S. 213.

In Gates this Court upheld a search on a stronger factual basis. A letter from an anonymous source informed the police that Mr. & Mrs. Gates were employed in drug trafficking. The letter gave the Gates' address and described in detail the Gates' itinerary. It predicted the date that Mrs. Gates would leave for Florida and her mode of transportation, their auto. It also predicted that Mr. Gates would fly down a few days later and drive the car back loaded with one hundred thousand ($100,000.00) dollars in drugs. The informant also stated that the couple had drugs worth over one hundred thousand ($100,000.00) in their basement and that they had "bragged" about not having to work. The letter concluded that "big drug dealers" visit the house often. 462 U.S. 225.

Upon receipt of this letter the

police corroborated the details of the suspect's actions. 462 U.S. at 225, 226. They verified Gates' address, his auto registration and the fact that he had reserved flight to Florida two days after Mrs. Gates' predicted date of departure. The officers learned that Gates had taken the flight, had gone to the motel room registered to a Susan Gates and that the couple had driven from the motel together in a car bearing Illinois plates registered to Gates. Twenty-two hours later the Gates arrived home in the same car and were arrested. A search of the car trunk revealed approximately three-hundred fifty (350) pounds of marijuana.

This Court reasoned in Gates that the letter writer's information about the Gates' travel plans, which was shown to be accurate through corroboration, made it likely that the information came from the Gates themselves or someone familiar with

their plans. 462 U.S. at 244. This supported the conclusion that the writer also probably had access to reliable information about the illegal activities. 462 U.S. at 245. Thus there was probable cause to search the Gates' car and home.

The Illinois Court wrongly held that the Warrant in this case was supported by probable cause where the totality of the evidence presented to the examining Magistrate fell far short of that available in Illinois v. Gates, 462 U.S. 213 (1983).

No factual basis was even offered for the conclusion that the Petitioner Cesario Zartuche was "Chalo" the person who allegedly provided the drugs which Claus sold to Doe. Claus referred to "Chalo", as his source. (C. 134-5, 137) This name is followed by (Cesario Zartuche) in the police officer's affidavit. (C. 134-5, 137) There is no indication in the

affidavit how the officer concluded that Cesario Zartuche was Chalo.

The only information given about Zartuche in the Complaint was an unverified description (which the State struck at argument) (R. 16) and the information relative to a warrant issued at the Park Avenue address 4-1/2 years prior to the present Complaint. (C. 138) The later information was misleading since it gave the impression that drugs had been recovered from Zartuche at that time. In fact they were not. (R. 30) Thus that information should not have been used for the purposes of showing that Zartuche had been involved with drugs in the past at that address.

Even if the information were properly considered, it indicated only that Zartuche was found at the Park Avenue address over 4-1/2 years before. The information does not support a conclusion

that he was currently selling drugs under the name Chalo or that he could be presently found at the Park Avenue address.

Unlike Gates, Supra., 462 U.S. 213 (1983) the police did not bother to verify Zartuche's address with the telephone company, the Secretary of State or any other source. The Judge issued a Warrant for an individual whose description was unverified, and whom neither the police nor the unnamed informant had observed in the reasonably recent past, on or near the premises described in the Complaint. Zartuche had apparently never even been seen in Claus' company by any reliable person.

The police in the present case completed two controlled drug purchases by the unnamed informant from Claus. There was reasonable grounds for the arrest of Claus. There was no showing, however,

that Claus was revealing his true source to Doe or that Claus even knew "Chalo's" full name.

Thus, under the "totality of the circumstances" test discussed above, the Illinois Court was in error when it upheld the Warrant without any reliable factual basis for the conclusion that Cesario Zartuche provided drugs to Claus at 1315 Park Avenue. The arrest based on said Complaint should have been quashed and all of the seized evidence should have been suppressed.

Therefore, the decision of the Illinois Court should be reversed.

CONCLUSION

For the above and foregoing reasons, Petitioner prays that a Writ of Certiorari issue reversing the Judgment of the court below.

Respectfully submitted,

LAWRENCE G. DIRKSEN
2635 Flossmoor Road
Flossmoor, IL 60422
(312) 957-7707
Counsel for Petitioner

FIRST DIVISION
JUNE 9, 1986

APPENDIX A

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

84-2120

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the) Circuit Court of) Cook County.
Plaintiff-Appellee,	)
vs.	) Honorable Cornelius
CESARIO ZARTUCHE,	) J. Houtsma,) Judge Presiding.
Defendant-Appellant.	)

ORDER PURSUANT TO SUPREME COURT RULE 23 DISPOSING OF DEFENDANT'S PETITION FOR REHEARING

After a stipulated bench trial, defendant Cesario Zartuche was found guilty of possession of more than 15 grams of heroin with intent to deliver and possession of more than 10 grams of cocaine with intent to deliver. (Ill. Rev. Stat. 1983, ch. 56 1/2, pars.

1401(a)(1), 1401(b)(1).) He was sentenced to enhanced concurrent seven-year terms of imprisonment and was fined $2,000 and assessed $70 in court costs. (Ill. Rev. Stat. 1983, ch. 56 1/2, par. 1408.) On appeal, we affirmed defendant's conviction, finding that his motion to quash the warrant issued to search him and his home was properly denied by the trial court because the source of information upon which it was issued was shown to be reliable. Defendant now petitions for rehearing, contending that this court's decision failed to sufficiently address his argument which he argues distinguished this case from Illinois v. Gates (1983), 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317, and its progeny.

In our Rule 23 order we noted that in Gates, the United States Supreme Court abandoned the two-prong test for establishing probable cause based on an

informant's tip set forth by Aquilar v. Texas (1964), 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509, and Spinelli v. United States (1969), 393 U.S. 410, 21 L. Ed. 2d 637, 89 S. Ct. 584. The Aquilar-Spinelli test required that the informant had to establish both his basis of knowledge that the person named in the complaint had been involved in criminal activity as well as his own veracity and reliability. In place of such test, Gates adopted a "totality of the circumstances" analysis which required that the judge issuing the warrant make a balanced assesment of the relative weights of all the various indicia of reliability attendant to an informant's tip. The Court held that probable cause could be found where the details of the informant's information were corroborated by independent police investigation.

We also noted that Illinois courts

have also found that probable cause exists where information provided by an informant was corroborated through police investigations. (People v. Winters (1983), 97 Ill. 2d 151, 454 N.E. 2d 299.) The Winters court found that when both the third person's basis of knowledge and veracity were established, probable cause existed. See also People v. Dillon (1970), 44 Ill. 2d 482, 256 N.E. 2d 451; People v. Finn (1978), 68 Ill. App. 3d 126, 385 N.E. 2d 103.

In People v. Gates (1983), 118 Ill. App. 3d 70, 454 N.E. 2d 1018, under a factual situation similar to the instant case, controlled drug purchases were made by drug agents from an informant. The agents observed the informant make contact with the defendant prior to each sale, although no drugs were seen changing hands. The search warrant complaint also stated that defendant had previously been

convicted of a drug-related crime. On appeal, this court found that the search warrant at issue was valid despite the fact that it was based, in part, on hearsay information obtained from an informant because police corroboration was able to establish the informant's reliability. We commented that despite the fact that the officers did not see anything pass from the defendant to the informant, the only reasonable conclusions to be reached from the observations by drug agents was that the defendant had met the informant to provide him with the contraband the informant then sold to the agents.

We find that defendant's attempts to distinguish these cases from his own by asserting that he was never seen by the police prior to this arrest and that police failed to corroborate such detail as whether he presently resided in the

premises they sought to search are insufficient. In the instant case, as in People v. Gates, the information provided by Claus was substantialy corroborated by independent police investigation. After Claus informed the informant that defendant was providing him the heroin he had sold to the informant, this information was corroborated by three controlled purchases. At the time of each of these purchases, prior to tendering the drugs to the informant, Claus was seen entering defendant's home which further corroborated the information received from Claus. Finally, Claus' statements to the informant were also corroborated by information that defendant had been previously arrested on drug-related charges after a search warrant was executed in his home in February 1978.

We consider defendant's argument that probable cause was lacking because Claus

was never searched prior to entering defendant's home, implying that Claus could have obtained the heroin elsewhere, but we find that such argument lacks merit. Here, Claus was observed entering defendnat's home on three occasions during controlled purchases by police and on a similar occasion by other agents. Moreover, Claus represented to the informant that defendant had the "best dope in town," that he could get quantities larger than one gram from defendant, and that defendant had numerous hiding places for drugs in his home. We find it highly unlikely that Claus would have made such statements yet obtained heroin from another source and chosen not to reveal such source to the informant, whom he had no reason to suspect was cooperating with police. Hence, we do not find that the fact that defendant was not seen by police prior to his arrest

sufficiently important to defect his conviction.

We also find the case of People v. Fenelon (1980), 88 Ill. App. 3d 191, 410 N.E. 2d 451, cited by defendant on his direct appeal and in his petition for rehearing, but find it to be unsupportive of his case. In Fenelon, no probable cause was found where there was no corroboration by the police officer in his affidavit of the information supplied to him by an informant who in turn received this information from an unknown third person.

For the reasons set forth above, defendant's petition for rehearing is denied.

Dated at Chicago, Illinois, this 9th day of June, 1986.

CAMPBELL, J., BUCKLEY and O'CONNER, JJ.

FIRST DIVISION
March 17, 1986

Notice

The test of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

84-2120

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE, OF ILLINOIS, Plaintiff-Appellee,	) Appeal from the) Circuit Ct. of) Cook County.
vs.	) Honorable) Cornelius J.
CESARIO ZARTUCHE, Defendant-Appellant.	) Houtsma,) Judge Presiding.

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

After a stipulated bench trial, defendant Cesario Zartuche was found guilty of possession of more than 15 grams of heroin with intent to deliver and possession of more than 10 grams but less than 30 grams of cocaine with intent to deliver. (Ill. Rev. Stat. 1983, ch. 56

1/2, pars. 1401(a)(1)-1408, 1401(b)(1)-1408.) He was sentenced to concurrent seven-year terms of imprisonment and was fined $2,000 and assessed $70 in court costs. Defendant now appeals, contending that the warrant to search him and his house should have been quashed where the source of information upon which it was issued was not shown to be reliable.

The record indicates that on October 16, 1982, Detective George Sintic of the Chicago Heights police department and John Doe, an anonymous informant, appeared before Judge Richard L. Samuels and both signed a search warrant complaint to search certain premises in Chicago Heights and the person of defendant. The object of the search was heroin, items used in the sale, manufacture and distribution of heroin, proof of residence and all recorded currency of the police department.

The search warrant complaint asserted that on October 4, 1982, Sintic met Doe, whom he had known for approximately three months. During this time Doe allegedly had given Sintic "street" information. Doe reportedly told Sintic that he had attempted to purchase heroin that day from Richard Claus; however, Claus had informed Doe that he would need to go first to defendant's home to purchase the heroin. Doe and Claus drove together to an area in Chicago Heights where Claus exited the vehicle, entered defendant's home, then returned moments later and gave Doe a tinfoil packet containing a beige powder. Doe ingested the substance and reported similar sensations to what he, a heroin user, had experienceed on previous occasions when consuming heroin. Claus advised Doe to come to him whenever he wanted anything because he had "the best dope in town."

Sintic alleged that three controlled purchases were then made. On the first occasion, October 5, Sintic searched the informant's car, found it to be free of money or contraband then gave Doe $75 in prerecorded money and followed him as he drove to an area in South Chicago Heights. There Sintic observed Claus enter the vehicle. The informant then drove to another area of town where Claus exited the vehicle and was followed on foot by Sintic. Sintic observed Claus enter defendant's home and exit moments later. A continued observation on the vehicle was kept as Doe drove Claus to Steger, Ilinois, where Claus left. Doe and Sintic then drove to a predetermined location where Doe gave Sintic a tinfoil pakcet containing a beige powder which he told Sintic he had purchased from Claus. Doe's car was again searched and found to be free of money or contraband. On

October 6, and October 15 two other controlled purchases were made; the circumstances of each were substantially similar to the first purchase. After the second purchase, Doe told Sintic that Claus had stated to him that the heroin purchased was the same type as the heroin bought on October 5; Claus also reportedly told Doe that defendant had many hiding places for drugs in his home. On October 15, Claus reportedly told Doe that he would have grams and half grams of heroin on hand but would have to get larger quantities for purchase from defendant.

On October 15, 1982, Sintic also received a report from the Northeastern Metropolitan Group (NEMEG) which informed him that on July 27, 1982, a NEMEG agent had purchased heroin from Claus in the area of Chicago Heights. Claus reportedly informed the agent that he had to obtain the heroin from his "man," then drove to

defendant's home followed by several other NEMEG agents. The search warrant complaint further stated that on February 7, 1978, the Cook County sheriff's police had executed a search warrant at the defendant's home; this search resulted in defendant's arrest for possession of heroin and cannabis.

The instant search warrant was signed by Judge Samuels and executed by Sintic on October 16, 1982. The search resulted in the seizure of 41.3 grams of heroin, 11.2 grams of cocaine, other items of contraband and currency. Defendant was arrested and charged with possession of heroin and of cocaine with intent to deliver.

Prior to trial, defendant filed a motion to suppress the instant search warrant; he alleged that the warrant failed to establish probable cause. The motion was denied. Defendant thereafter

pleaded guilty to the charges and sentence was entered. However, subsequently, defendant sought and was permitted to withdraw his guilty plea due to ineffective assistance of counsel after he indicated that counsel failed to inform him that by entering a guilty plea he would waive his right to appeal the trial court's denial of his motion to suppress. Defendant thereafter waived his right to trial by jury and, after a stipulated bench trial, was found guilty of possession of more than 15 grams of heroin with intent to deliver and possession of more than 10 grams but less than 30 grams of cocaine with intent to deliver.

On appeal defendant contends that the warrant issued to search him and his home should have been suppressed where the source of information, Claus, was not shown to be a reliable informant and where the complaint failed to offer any reliable

factual basis to support the conclusion that defendant had sold drugs to Claus at his home. The State asserts in reply that the trial court properly refused to quash the search warrant because the complaint contained substantial corroborative detail establishing the informant's reliability and the basis for the conclusion that defendant was selling drugs at his home. The State also maintains that the information provided by Claus was shown to be reliable since it was clearly against his penal interest.

The case which is controlling in this instance is Illinois v. Gates (1983), 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317. In Gates, the United States Supreme Court abandoned the two-prong test for establishing probable cause based on an informant's tip set forth by Aguilar v. Texas (1964), 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509, and Spinelli v.

United States (1969), 393 U.S. 410. 21 L. Ed. 2d 637, 89 S. Ct. 584. The Aguilar-Spinelli test required that the informant had to establish both his basis of knowledge that the person named in the complaint had been involved in criminal activity as well as his own veracity and reliability. In place of such test, Gates adopted a "totality of the circumstances" analysis which required that the judge issuing the warrant make a balanced assessment of the relative weights of all the various indicia of reliability attendant to an informant's tip. The Court found that the task of the issuing judge was simply to make a practical, common-sense decision whether from the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there was a fair probability that contraband or evidence of

a crime would be found in a particular place. Reaffirming other methods for evaluating an informant's tip which were established in its previous decisions, the Court held that probable cause could be found where the details of the informant's information were corroborated by independent police investigation.

Illinois courts have also found that probable cause exists where information provided by an informant was corroborated through police investigation. (People v. Winters (1983), 97 Ill. 2d 151, 454 N.E. 2d 299.) In Winters, a police officer received information from an informant whom the officer knew and who had on previous occasions given information which had led to several arrests. While the informant told the officer that he had received his information from an unidentified third person, whose reliability could not be attested to,

subsequent investigation by the police substantially corroborated the information originating with the unknown third person. The Winters court found that both the third person's basis of knowledge and veracity were established and held that whether either the Aguilar-Spinelli test or the "totality of the circumstances" test established in Gates were used, probable cause existed based on substantial police corroboration. See also People v. Dillon (1970), 44 Ill. 2d 482, 256 N.E. 2d 451; People v. Finn (1978), 68 Ill. App. 3d 126, 385 N.E. 2d 103.

In People v. Gates (1983), 118 Ill. App. 3d 70, 454 N.E. 2d 1018, under a factual situation similar to the instant case, controlled drug purchases were made by drug agents from an informant. The agents observed the informant make contact with the defendant prior to each sale,

although no drugs were seen changing hands. The search warrant complaint also stated that defendant had previously been convicted of a drug-related crime. On appeal, this court found that the search warrant at issue was valid despite the fact that it was based, in part, on hearsay information obtained from an informant because police corroboration was able to establish the informant's reliability. We commented that despite the fact that the officers did not see anything pass from the defendant to the informant, the only reasonable conclusion to be reached form the observations by drug agents was that the defendant had met the informant to provide him with the contraband the informant then sold to the agents. This court also found that it was reasonable under the cicumstances for agents to give credit to the statements of the informant that defendant had a supply

of drugs in his home.

In the instant case, as in People v. Gates, the information provided by Claus was substantially corroborated by independent police investigation. After Claus informed Doe that defendant was providing him the heroin he had sold to Doe, this information was corroborated by three controlled purchases. At the time of each of these purchases, prior to tendering the drugs to Doe, Claus was seen entering defendant's home which further corroborated the information received from Claus. Finally, Claus' statements to Doe were also corroborated by information that defendant had been previously arrested on drug-related charges after a search warrant was executed in his home in February 1978.

We consider defendant's argument that probable cause was lacking because Claus was never searched prior to entering

defendant's home, implying that Claus could have obtained the heroin elsewhere, but we find that such argument lacks merit. We note that his argument was rejected by the court in People v. Dillon. Here, Claus was observed entering defendant's home on three occasions during controlled purchases by police and on a similar occasion by NEMEG agents. Moreover, Claus represented to Doe that defendant had the "best dope in town," that he could get quantities larger than one gram from defendant, and that defendant had numerous hiding places for drugs in his home. We find it highly unlikely that Claus would have made such statements yet obtained heroin from another source and chosen not to reveal such source to Doe, whom he had no reason to suspect was cooperating with police.

We also consider the cases cited by defendant, People v. Tisler (1984), 103

Ill. 2d 226, 469 N.E. 2d 147, and People v. Fenelon (1980), 88 Ill. App. 3d 191, 410 N.E. 2d 451, but find them to be unsupportive of defendant's case. In Tisler, the Illinois Supreme Court found there was probable cause where the details of a reliable informant's statements were corroborated by police prior to arrest. In Fenelon, no probable cause was found where there was no corroboration by the police officer in his affidavit of the information supplied to him by an informant who in turn received this information from an unknown third person.

A reviewing court will not disturb a trial court's finding on a motion to suppress unless the finding is manifestly erroneous. (People v. Tisler.) Rather, this court is to simply decide whether the evidence viewed as a whole provided a substantial basis for the issuing judge's finding of probable cause. (Illinois v.

Gates.) Under the totality of the circumstances analysis as directed by Illinois v. Gates, we find that there was a substantial basis for the trial court's finding of probable cause.

For the reasons set forth above, we affirm the judgment of the circuit court. As part of our judgment, we grant the State's request and assess $50 against defendant as costs for this appeal.

Dated at Chicago, Illinois, this 17th day of March, 1985.

BUCKLEY, P.J., CAMPBELL and O'CONNER, JR., JJ.

APPENDIX B

63790 ILLINIOS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, IL 62706
(217) 782-2035

October 2, 1986

Mr. Joseph C. Corsino
Attorney at Law
2635 Flossmoor Road
Flossmoor, IL 60422

No. 63790 - People State of Illinois, respondent, v. Cesario Zartuche, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 1986.